

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

REGINA BUENAVENTURA
DELA CRUZ,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. CV 13-06286-DFM

MEMORANDUM OPINION AND
ORDER

Plaintiff appeals from the denial of her application for Social Security benefits. On appeal, the Court concludes that the administrative law judge (“ALJ”) erred in failing to consider the impact of Plaintiff’s mental impairments on her residual functional capacity (“RFC”). Therefore, the Court reverses the ALJ’s decision and remands to the ALJ for consideration of the functional limitations associated with Plaintiff’s mental impairments.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed applications for Social Security Disability Insurance (“SSDI”) and Supplemental Security Income (“SSI”) benefits, alleging

1 disability beginning July 2, 2008. Administrative Record (“AR”) 14.

2 At step two of the sequential disability analysis, the ALJ determined that
3 several of Plaintiff’s physical impairments were “severe,” but that her mental
4 impairments of depression and anxiety, while medically determinable, were
5 not severe. AR 17-19. In so finding, the ALJ rejected, at least in part, opinions
6 from two physicians. Dr. James Scaramozzino, a consultative examiner,
7 determined based on a review of Plaintiff’s clinical records and an in-person
8 examination that Plaintiff was moderately impaired in her intellectual
9 functioning, daily activities, social functioning, ability to deal with changes in
10 a work setting, ability to complete a normal workday and workweek without
11 interruption and at a consistent pace, and ability to accept instructions from a
12 supervisor and respond appropriately. AR 685. Dr. G. Johnson, a state
13 consulting physician, reviewed the medical record and determined that
14 Plaintiff suffered from mild restrictions in daily living and social functioning,
15 and moderate difficulties in maintaining concentration, persistence, or pace.
16 AR 701.

17 The ALJ found that she could not afford Dr. Scaramozzino’s opinion
18 “significant weight” because it was “internally inconsistent,” it contradicted
19 other evidence, and it “afford[ed] the maximum possible credibility to the
20 claimant’s subjective complaints of pain and symptoms and functional
21 limitations.” AR 18. The ALJ assigned weight only to the mild limitations
22 noted in Dr. Johnson’s opinion, determining that the moderate limitation in
23 concentration, persistence, or pace was unsupported by the medical evidence
24 and inconsistent with other medical opinion. AR 19.

25 Because the ALJ determined that certain of Plaintiff’s physical
26 impairments were severe, she proceeded with an RFC assessment that
27 synthesized limitations associated with her physical impairments. AR 20-24.
28 The ALJ then determined, based on the testimony of a vocational expert

1 (“VE”) that Plaintiff remained able to perform her past relevant work as a
2 cashier. AR 24.

3 II.

4 ISSUES PRESENTED

5 The parties dispute whether the ALJ (1) properly rejected the opinions of
6 Plaintiff’s treating and examining physicians; (2) properly determined that
7 Plaintiff’s mental impairments were non-severe at step two of the five-step
8 sequential evaluation process; and (3) properly determined that Plaintiff’s
9 mental impairments did not meet the one-year durational requirement. See
10 Joint Stipulation (“JS”) at 14.

11 III.

12 STANDARD OF REVIEW

13 Under 42 U.S.C. § 405(g), a district court may review the
14 Commissioner’s decision to deny benefits. The ALJ’s findings and decision
15 should be upheld if they are free from legal error and are supported by
16 substantial evidence based on the record as a whole. 42 U.S.C. § 405(g);
17 Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d
18 742, 746 (9th Cir. 2007). Substantial evidence means such relevant evidence as
19 a reasonable person might accept as adequate to support a conclusion.
20 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th
21 Cir. 2007). It is more than a scintilla, but less than a preponderance.
22 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d
23 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports
24 a finding, the reviewing court “must review the administrative record as a
25 whole, weighing both the evidence that supports and the evidence that detracts
26 from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720
27 (9th Cir. 1996). If the evidence can reasonably support either affirming or
28 reversing, the Court may not substitute its judgment for that of the ALJ.

1 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999).

2 **IV.**

3 **DISCUSSION**

4 Plaintiff contends that the ALJ improperly rejected the opinions of
5 numerous physicians, and consequently failed to synthesize into Plaintiff's
6 RFC assessment certain limitations described by those physicians. JS at 14-21,
7 37-39. The Court's review of the record reveals that, at a minimum, the ALJ
8 failed to properly consider the mental impairments described in the medical
9 opinions of Drs. Scaramozzino and Johnson in reaching an RFC assessment.
10 Because the Court finds that the decision of the ALJ must be reversed on that
11 basis, the Court will not address Plaintiff's remaining contentions.

12 The portion of the ALJ's decision dedicated to assessing Plaintiff's RFC
13 is devoid of any mention of Plaintiff's mental impairments, the opinions of
14 Drs. Scaramozzino and Johnson, or the mental health observations made
15 during Plaintiff's three years of visits to Marian Community Clinics. An ALJ
16 must consider all of a claimant's medically determinable impairments,
17 including those determined to be non-severe, in reaching an RFC assessment.
18 See 20 C.F.R. §§ 404.1545(e), 416.945(e); SSR 96-8P, 1996 WL 374184 ("In
19 assessing RFC, the adjudicator must consider limitations and restrictions
20 imposed by all of an individual's impairments, even those that are not 'severe.'
21 While a 'not severe' impairment(s) standing alone may not significantly limit
22 an individual's ability to do basic work activities, it may--when considered
23 with limitations or restrictions due to other impairments--be critical to the
24 outcome of a claim."). Because the ALJ determined that Plaintiff's mental
25 impairments of depression and anxiety were medically determinable, it was
26 error for the ALJ to fail to consider these impairments in her RFC analysis.

27 Although it is true that the ALJ considered and partially rejected the
28 opinions of Drs. Scaramozzino and Johnson in reaching her determination

1 that Plaintiff's mental impairments were not severe, the record shows that the
2 ALJ failed to consider the opinions (and the underlying mental impairments
3 they describe, supported by the clinical notes from Marian Community
4 Clinics) in assessing Plaintiff's RFC. As the ALJ noted at step two, the RFC
5 assessment "requires a more detailed assessment" as compared with the
6 assessment of whether an impairment is severe at step two. AR 19. Rather than
7 provide such an assessment, however, the ALJ noted only that "the following
8 residual functional capacity assessment reflects the degree of limitation the
9 undersigned has found in the 'paragraph B' mental function analysis." *Id.* The
10 ALJ therefore did not explain how she determined that the medically-
11 determinable mental impairments described in the partially-credited opinions
12 of Drs. Scaramozzino and Johnson would not lead to RFC limitations when
13 synthesized with Plaintiff's other medically determinable impairments. This
14 error was compounded by the ALJ's imprecision in describing the degree to
15 which she credited Dr. Scaramozzino's opinion. *See* AR 18. On remand, in
16 determining the impact of Plaintiff's mental impairments on her RFC, the ALJ
17 should take care to properly assess the medical opinions, considering the issues
18 mentioned here and describing the extent to which each physician's opinion is
19 credited in terms that are readily susceptible to review.

20 In light of the ALJ's silence, the Court may not presume that the ALJ
21 properly discredited the medical opinions to such an extent that Plaintiff's
22 RFC would be unaffected by the mental impairments they describe, nor accept
23 the post-hoc justifications provided by the Commissioner for doing so.¹ *See*,
24 e.g., *Johnson v. Colvin*, No. 12-435, 2013 WL 3337772, at *6 n.3 (C.D. Cal.

25
26 ¹ Indeed, the ALJ explicitly credited the opinion of Dr. Johnson to the
27 extent of the mild limitations that it described, *see* AR 19, but made no
28 mention of this opinion in her RFC analysis.

1 July 1, 2013) (“While the Commissioner now offers other reasons to explain
2 the ALJ’s [decision], the Court cannot entertain these post hoc
3 rationalizations.”).

4 The law is well established that the decision whether to remand for
5 further proceedings or simply to award benefits is within the discretion of the
6 Court. See, e.g., Salvador v. Sullivan, 917 F.2d 13, 15 (9th Cir. 1990); Lewin v.
7 Schweiker, 654 F.2d 631, 635 (9th Cir. 1981). Remand is warranted where
8 additional administrative proceedings could remedy defects in the decision.
9 Lewin, 654 F.2d at 635. Based on the foregoing, the Court finds that remand is
10 warranted for clarification as to the impact, if any, of Plaintiff’s mental
11 impairments on her RFC.

12 V.

13 **CONCLUSION**

14 For the reasons stated above, the decision of the Social Security
15 Commissioner is REVERSED and the matter is REMANDED for further
16 proceedings consistent with this opinion.

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18 Dated: June 24, 2014



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21 DOUGLAS F. McCORMICK
22 United States Magistrate Judge
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